IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH JAIPUR

J U D G M E N T

Badami V/S Patoli and others

S.B. Civil Regular First Appeal No.158/87 against the judgment and decree dated 31.8.87 passed by Shri Ravindra Kumar Jain, Additional District Judge, Dholpur in Civil Suit No. 9/1983.

Date of Judgment ::: September 18 **,2006**

PRESENT

HON'BLE MR. JUSTICE KHEM CHAND SHARMA

Mr. R.D. Tripathi on behalf of
Mr. Rajendra Prasad for the appellant
Mr. Sunil Jain on behalf of
Mr. R.P. Garg for the respondent

BY THE COURT:

This appeal under Section 96 CPC arises out of the judgment and decree dated 31.8.1987 passed by the learned Additional District Judge Dholpur, whereby the learned Judge has dismissed the plaintiffs' suit for partition.

Plaintiffs Badami and Haribheji filed a suit against the defendants for partition, with the

averments that Shiv Lal ancestor of the parties had 3 sons, namely Tunda, Sanwalia and Sultan (all since dead). Tunda Ram left behind his son Lala Ram. Lala Ram also died leaving behind 5 daughters, namely Badami, Harbheji (both plaintiffs), Patoli, Ruma and Ram Pyari. Ruma died leaving behind two sons Chote Lal and Vishnu and one daughter Must. Ram Bai who are defendants No. 11,12 and 13, respectively. Ram Pyari also died leaving behind two sons and a daughters, namely Babulal, Sanya Ram and Gulkandi, who are defendants No.8,10 and 9 respectively. The plaintiffs who are daughters of deceased Lala Ram have filed a suit for partition against her sisters and dependents of deceased Sanwalia and Sultan, both sons of Shiv Lal. According to the plaint, Lala Ram died on 22.9.76 leaving behind the properties mentioned in Appendix A,B and C and that all the 5 daughters of deceased Lala Ram had 1/5th share each in the property left by him.

It may be stated that defendants No. 1 to 5 only contested the suit by filing written statement and ex parte proceedings were drawn against remaining defendants. The contesting defendants have stated that partition had already taken place during the life time

of Shiv Lal among his 3 sons, namely Tunda, Sanwalia and Sultan and therefore, none had any concern with the property of each other. So far as agricultural land of deceased Lal Ram as is shown in Appendix-A attached the suit is concerned, the defendants have stated that out of this land, deceased Lala Ram had already sold 4 bighas 13 biswas of land during his life time to Rambabu, defendant No.5 and remaining agricultural land had also been sold by Lala Ram during his life time to Mst. Patola, defendant No.1 and thus there existed no land in the name of Lala Ram at the time of his death. So far as houses shown in 4 different maps annexed with Appendix B is concerned, it has been averred by the contesting defendants that these houses never belonged to Lala Ram and he has not left any such houses at the time of his death and the houses shown in the maps are the property of the defendants. As regards cash and ornaments as shown in Appendix C are concerned, the defendants have averred that it is not within their knowledge that Lala Ram left out any such property at the time of his death and they denied any such property of Lala Ram in their possession.

On the basis of pleadings of the parties, the

trial court framed issues and at the conclusion of trial, dismissed the plaintiffs' suit. Hence the present appeal.

At the very out set it may be stated that plaintiff No.2 Haribheji has no grievance against the judgment and decree passed by the trial court and therefore, she has not joined appellant Mst. Badani in the instant appeal.

There is no dispute that partition of the ancestral property among 3 sons of Shiv Lal had already taken place and, therefore, none had any concern with the property of each other. Even, PW1 Mst, Badami plaintiff appellant has admitted in his statement in specific term that partition had already taken place among Tunda, Sanwalia and Sultan. It is thus crystal clear that all the three brothers had separated during their life time and partition of property had also taken place among them and hence one cannot claim any right in the property of others.

To prove the fact that Lal Ram while dying left out immovable properties as per four maps annexed with

schedule-B, the plaintiff has examined herselfas PW1 and Ramji Lal as PW2. PW1 Badami has only deposed about her father being in possession of immovable property shown in four maps. However, she has not been able to state whether her father was owner of the property and as to how the property came in his possession. That apart, the details of the construction of the house as stated by the plaintiff appellant do not at all tally with any of the properties shown in the maps annexed with Schedule-B. Similar is the statement of PW2 Ramji Lal. This witness in his cross examination has stated measurements of the house, but the same do not tally with the measurements shown in the maps. It was for the plaintiff to have proved that the property mentioned in Appendix B was the property in ownership of Lal Ram and he left behind this property while dying. It has also not come in the evidence of the plaintiff as to which property Lala Ram received from his father Shiv Lal and which property he acquired at his own. On the contrary, DW4 Rambabu has stated in his statement that Lala Ram had no house in Chandupura and the the house in which he was residing belonged to him and Chironji. DW4 Lala Ram in his statement has

stated that property mentioned in Appendix B does not belong to Lala Ram. It may also be mentioned that the property shown in the maps annexed to Appendix B is different that what the plaintiff has described and it is situated at different places. The plaintiff has relied upon the evidence of DW1 Gote Ram, power of attorney of defendant Patola, who has stated that Lala Ram while dying left behind a house as mentioned in the plaint. In my view the evidence of DW1 Gote Ram does not help the plaintiff, inasmuch as DW1 is a resident of some different village. Having gone through the statement of DW1, it appears to me that this witness has no knowledge about the house and hence his statement cannot have any binding effect on the case of the defendants. In my considered view there is no evidence that Lala Ram got the house in partition between the brothers and therefore, no question of any house as shown in schedule-B having been left out by him at the time of his death.

The plaintiff appellant has further claimed partition of the property viz., cash of Rs. 10,000/- and ornaments as shown in Appendix C, alleged to be left out by her father Lala Ram at the time of his

death. On perusal of the evidence on record, it appears that none of the plaintiff's witness has stated anything about the cash and ornaments having been left out by Lala Ram at the time of his death. Even the plaintiff has no where stated in her plaint as to which of the defendant is in possession of the cash and ornaments and what kind of ornaments her father had left behind. On the contrary, PW1 Badami in her cross examination has admitted that she does not know as to whom her father had given the ornaments. Undisputedly, the witness was not present at the time of death of her father Lala Ram. It has come in evidence that she had visited after the death of Lala Ram to pay homage. In this view of the matter, her statement that Rs. 4500/- were lying in the pocket of Lala Ram at the time of his death cannot at all be believed. As such, there is no evidence on record to prove that Lala Ram, at the time of his death, had with him cash and ornaments.

The defendants have come with a specific plea that Lal Ram, during his life time, had sold 8 bighas and 16 biswas of agricultural land as mentioned in Appendix-A to Rambabu, defendant No.5 and Patola, defendant No. 1 through sale deeds Ex/3 and Ex/4 respectively. DW2

Ashok Kumar and DW3 Nratya Kumar, witnesses to the sale deeds have admitted their signatures on the sale deeds. The witnesses have also stated that Ramlal had put his thumb impression on the sale deeds. DW1 Gote Ram and DW4 Rambabu have also made their statements to this effect. Even, PW1 Mst. Badani in his cross examination has stated that she does not remembers whether Lala Ram has sold his agricultural land to Patola and Rambabu. The defendants have produced the statement Ex. A-1 of this witness, wherein the witness while making her statement on 15.9.77 before the Assistant Collector No.2, Dholpur has admitted that Lala Ram had sold his agricultural land to Ram Babu and Patola. The explanation for disbelieving this statement of PW1 Badami as has been offered does not appear to be plausible, inasmuch as it has well proved that Lala Ram during his life time had sold his agricultural land on 15.4.1976 to defendants Ram Babu and Patola through sale deeds Ex. 3 and 4.

Having through through the judgment impugned in this appeal it appears that trial court has taken into consideration every aspect of the matter and having evaluated the evidence adduced by the respective

parties in true perspective has rightly dismissed the plaintiff's suit for partition.

For the reasons aforesaid, I do not find any substance in the appeal, which is hereby dismissed with no order as to costs.

(Khem Chand Sharma), J.

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